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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,988	08/22/2001	Kenneth Lloyd Riley	GJH-0001	4445

7590 12/10/2003

Gerard J Hughes  
Exxonmobile Research & Engineering Company  
PO Box 900  
Annandale, NJ 08801-0900

EXAMINER

ARNOLD JR, JAMES

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/869,988	<b>Applicant(s)</b> RILEY ET AL.	
	<b>Examiner</b> James Arnold, Jr.	<b>Art Unit</b> 1764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5 September 2003 has been entered.

### ***Double Patenting***

Claims 1-3, 5-15, and 17-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,162,350. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims disclose a hydroprocessing method utilizing a bulk metal catalyst comprising molybdenum, tungsten, oxygen, and nickel having an X-ray diffraction pattern with crystalline peaks at  $d=2.53$  and  $d=1.70$  Angstroms.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize cobalt in lieu of nickel as a component of the bulk metal catalyst because both cobalt and nickel are Group VIII metals and would be expected to exhibit similar properties.

Claims 1-3, 5-15, and 7-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 09/869,983. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims disclose a hydroprocessing

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method utilizing a bulk metal catalyst comprising molybdenum, tungsten, oxygen, and nickel having an X-ray diffraction pattern with crystalline peaks at  $d=2.53$  and  $d=1.70$  Angstroms.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a general hydrocarbon feedstock rather than selecting from a group of distillate feedstocks because the named distillate feedstocks in the 09/869,983 application are typical hydrocarbon feedstocks suitable for hydroprocessing.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 5-15, and 7-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-8, and 10-11 of copending Application No. 09/869,985. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims disclose a hydroprocessing method utilizing a bulk metal catalyst comprising molybdenum, tungsten, oxygen, and nickel having an X-ray diffraction pattern with crystalline peaks at  $d=2.53$  and  $d=1.70$  Angstroms.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize more than one catalyst bed because multiple beds allow for greater hydrotreatment opportunities.

#### ***Response to Arguments***

Applicant's arguments have been fully considered and are deemed persuasive.

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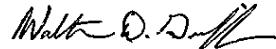
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Arnold, Jr. whose telephone number is 703-305-5308. The examiner can normally be reached on Monday-Thursday 8:30 AM-6:00 PM; Fridays from 8:30 AM-5:00 PM with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-6824. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Ja  
December 4, 2002

  
**Walter D. Griffin**  
**Primary Examiner**